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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,303	12/30/1999	GILBERT WOLRICH	10559/133001	7635
20985	7590	12/31/2002	EXAMINER	
FISH & RICHARDSON, PC 4350 LA JOLLA VILLAGE DRIVE SUITE 500 SAN DIEGO, CA 92122			HUNT, ERIC T	
			ART UNIT	PAPER NUMBER
			2142	
DATE MAILED: 12/31/2002				

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/476,303	WOLRICH ET AL.
Examiner	Art Unit	
Eric T. Hunt	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 October 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-7 and 13-18 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,012,151 to Mano.

3. Regarding claim 1, Mano teaches a method for receiving data from a plurality of ports for processing by a plurality of processes, comprising:

assigning one of the plurality of ports [Mano column 3, lines 48-50] to one of the plurality of processes [Mano column 3, lines 10-12 & 25-27];

determining that additional data is available from the assigned port [Mano column 3, lines 50-51 & 40-42]; and

awaiting notification by the one of the plurality of processes that processing of the additional data has been completed [Mano column 9, lines 12-17 completion of installation &

file update] prior to re-assigning the port to one of the plurality of processes [Mano column 10, lines 20-22 when installed].

4. Regarding claim 2, Mano teaches the invention substantially as claimed as noted above. Mano further teaches

determining if data is available from one of the plurality of ports **[Mano column 3, lines 40-42 & 50-51 active processor in correspondence table is equivalent to available data].**

5. Regarding claim 3, Mano teaches the invention substantially as claimed as noted above. Mano further teaches

selecting one of the plurality of processes **[Mano column 19, lines 50-52].**

6. Regarding claim 4, Mano teaches the invention substantially as claimed as noted above. Mano further teaches

directing transfer of the data from the assigned port **[Mano column 15, lines 25-27]** to the one of the plurality of processes for processing **[Mano column 15, lines 28-31 & column 16, lines 5-7 highways correspond to ports].**

7. Regarding claim 5, Mano teaches the invention substantially as claimed as noted above. Mano further teaches selecting comprises:

determining if any of the plurality of processes is available to process the data **[Mano column 17, lines 7-10];** and if it is determined that one of the plurality of processes is available to process the data **[Mano column 17, lines 12-17],** choosing an available one of the plurality of processes.**[Mano column 17, lines 24-28]**

8. Regarding claim 6, Mano teaches the invention substantially as claimed as noted above. Mano further teaches

recording the port-to-process assignment on an assignment list [Mano column 3, lines 40-42 & figure 5a correspondence table, plurality of ports and pairs of active and standby processors].

9. Regarding claim 7, Mano teaches the invention substantially as claimed as noted above. Mano further teaches

removing the port-to-process assignment from the assignment list upon receiving notification that the processing has been completed [Mano column 6, lines 59-62 & column 11, lines 37-41 monitors status and maintains correspondence table status change].

10. Claims 13-18 are apparatus claims corresponding to the method claimed in claims 1-7; therefore claims 13-18 are rejected under the same rationale.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,012,151 to Mano as applied to claims 1-7 above, and further in view of U.S. Patent No. 6,393,483 to Latif.

13. Regarding claim 8, Mano teaches the invention substantially as claimed as noted above. Mano does not teach wherein the data comprises packet data. However, in art related to reassignment of receive tasks for a plurality of ports, Latif teaches transmitting packet data from

a plurality of ports [**Latif column 6, lines 20-23**]. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Mano with the multiport NIC receiving means because it provides increased load balancing capability.

14. Regarding claim 9, Mano & Latif teach the invention substantially as claimed as noted above. Mano & Latif further teach wherein the packet data comprises a network packet [**Latif column 6, lines 20-23 & column 9, lines 7-9 packet data transmitted to/from NIC**].

15. Regarding claim 10, Mano & Latif teach the invention substantially as claimed as noted above. Mano & Latif further teach wherein the packet data comprises a predetermined portion of a network packet [**Latif column 6, lines 43-45 MAC address appended to packet**].

16. Regarding claim 11, Mano & Latif teach the invention substantially as claimed as noted above. Mano & Latif further teach wherein the network packet comprises an Ethernet packet [**Latif column 6, lines 18-19**].

17. Regarding claim 12, Mano & Latif teach the invention substantially as claimed as noted above. Mano & Latif further teach wherein the one of the plurality of ports comprises a 10/100 BaseT Ethernet port [**Latif column 5, lines 21-22 & column 1, lines 61-63 bandwidth corresponds to 10/100 BaseT Ethernet**].

Response to Arguments

18. Applicant's arguments filed 10/15/2002 have been fully considered but they are not persuasive.

19. In substance applicant argued:

A) The prior art neither discloses nor suggests that any determination ever be made whether additional data is available from the assigned port and awaiting notification by

the one of the plurality of processes that processing of the additional data have been completed.

As to argument A, Mano teaches when a data output request with respect to an input/output port arises; a determination is made as to whether or not the processor is in charge as an active processor. If the processor is in charge as an active processor, the input/output request issues a data input command [Mano column 25, lines 59-65] corresponding to additional data is available from the assigned port.

Mano teaches a processor including processor status reporting means [Mano column 6, lines 29-31], the processor status comprising completion of installation, completion of a file update, and completion of an un-installation [Mano column 9, lines 12-14]. Mano further teaches reassignment of processors to input/output ports as an active or a standby processor takes place when a processor is installed [Mano column 10, lines 20-24] this and the above cited teachings are all drawn to awaiting notification by a processes that processing of additional data have been completed.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric T. Hunt whose telephone number is 703-305-4868. The examiner can normally be reached on 7am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on 703-305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

E.H.
December 23, 2002

Mark R. Powell
MARK POWELL
ADVISORY PATENT EXAMINER
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